

ENTERED

November 04, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISIONMARLON CRAIG TERRY,
TDCJ-CID NO. 1965291
Petitioner

VS.

LORIE DAVID, DIRECTOR, TEXAS
DEPT. OF CRIMINAL JUSTICE, C.I.D.
Respondent§
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CIVIL ACTION NO. 7:16-CV-68

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2254, which motion had been referred to the Magistrate Court for a Report and Recommendation. Also pending before the court are Respondent's Motion for Summary Judgment with Brief and Support, (Dkt. Entry No. 18), along with Petitioner's recently filed Motion to Dismiss Petition for Writ of Habeas Corpus, which is construed as a motion to voluntarily dismiss his claims under Fed.R.Civ.P.41(a). (Dkt. Entry No. 21.) On October 5, 2016, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner's Motion to Dismiss his Claims under 28 U.S.C. § 2254 be granted, his claims be dismissed without prejudice, and Respondent's Motion for Summary Judgment be granted only to the extent Respondent moves the court to dismiss Petitioner's claims for non-exhaustion.

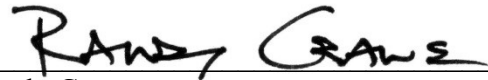
Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.¹ Finding no clear error, the Court adopts the Report and

¹As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Douglas v. United Services Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996)(quoting Fed. R. Civ. P.72(b) advisory committee's note (1983)) *superceded by statute on other grounds* by 28 U.S.C. § 636(b)(1), *as stated in* ACS Recovery Servs., Inc v. Griffin, No. 11-40446, 2012 WL 1071216, at *7 n.5 (5th Cir. April 2, 2012).

Recommendation in its entirety. Accordingly, Petitioner's Motion to Dismiss his claims under 28 U.S.C. § 2254 (Dkt. Entry No. 21) is **GRANTED**, his claims are dismissed without prejudice. Furthermore Respondent's Motion for Summary Judgment (Dkt. Entry No. 18,) is **GRANTED** but to the extent Respondent moves the court to dismiss Petitioner's claims for non-exhaustion.

IT IS SO ORDERED.

SO ORDERED this 4th day of November, 2016, at McAllen, Texas.

A handwritten signature in black ink that reads "Randy Crane". The signature is written in a cursive, slightly stylized font. The "R" is large and loops around the "a", and the "C" is also large and loops around the "r". The "e" is written with a simple horizontal stroke.

Randy Crane
United States District Judge